

191—100.41 (523A) Disciplinary procedures.

100.41(1) *Investigations.* The commissioner is authorized by Iowa Code sections 17A.13(1) and 523A.803 to conduct such investigations as the commissioner deems necessary to determine whether any person has violated or is about to violate Iowa Code chapter 523A. The commissioner is authorized to issue and enforce subpoenas to compel testimony and to compel the production of books and records, as more fully described in Iowa Code section 523A.803. Upon the commissioner's determination that probable cause exists to commence a disciplinary proceeding, the procedures contained in 191—Chapter 3 shall apply.

100.41(2) *Legal relationship of sales agent to preneed seller.* For purposes of Iowa Code section 523A.502(1), a sales agent offering preneed services on behalf of a preneed seller is deemed to have a legal relationship as an agent of the preneed seller. The determination of whether a sales agent and a preneed seller have a principal-agent relationship will be made by the commissioner based on the totality of the circumstances surrounding the business relationship.

100.41(3) *Factors used to determine whether a preneed seller has agreed to provide merchandise or services.*

a. Unless the lack of a mutual agreement has been appropriately documented in the preneed seller's preneed purchaser file records, a preneed seller has agreed "to furnish cemetery merchandise, funeral merchandise, funeral services, or a combination thereof" and received an "initial payment," for purposes of Iowa Code section 523A.102(23), if:

(1) A sales agent of the preneed seller has met in person, or had an interactive discussion by telephone or another form of electronic communication, and discussed specific items of merchandise or services and the price of the applicable merchandise or services with a potential purchaser and the potential purchaser did any of the following:

1. Transferred ownership of insurance to the preneed seller,
2. Assigned proceeds of insurance to the preneed seller, or
3. Established a financial account made payable on death to the preneed seller.

(2) A sales agent of the preneed seller has met in person, or had an interactive discussion by telephone or another electronic communication, and discussed specific items of merchandise or services and the applicable prices with the owner of a financial account for which the preneed seller has been named as the pay-on-death beneficiary to receive funds upon the death of the owner of the financial account.

b. Written documents retained in the preneed seller's records may rebut the presumption that a purchase agreement exists.

100.41(4) *Penalties.* Persons violating Iowa Code chapter 523A, this chapter, or any associated rules or implementing orders may be subject to one or more of the following penalties.

a. Pursuant to Iowa Code sections 523A.204(4) and 523A.502A, the failure of a licensee to timely file an annual report shall result in the license being placed on restricted status. The licensee is not authorized to solicit or execute or amend any purchase agreement under Iowa Code chapter 523A until the license has been reinstated.

b. If the commissioner issues or renews a license and subsequently determines that the payment method was declined or returned without payment to the commissioner, the license shall be immediately placed on restricted status until the payments are made and any fees or penalties charged by the commissioner are paid, at which time the license may be reinstated at the request of the applicant.

c. The commissioner may impose the disciplinary sanctions of Iowa Code chapter 523A, and of this chapter, alone or in combination, against a preneed seller or sales agent, or as a condition of licensure of an applicant for a preneed seller license or sales agent license or as a condition of renewal of a license. Sanctions include but are not limited to the following:

- (1) Issuing a warning letter or a letter of reprimand.
- (2) Requiring additional education or training.

- (3) Requiring certain specified procedures or methods of operation.
- (4) Ordering the payment of consumer restitution.
- (5) Placing a licensee on probationary status with or without the imposition of reasonable conditions to control or monitor conduct, such as periodic reports.
- (6) Imposing costs associated with the commissioner's investigation and enforcement activities.
- (7) Imposing any other sanction allowed by law.

d. A person with a restricted or expired license is subject to disciplinary action, injunctive action, criminal sanctions and any other available legal remedies in the event of any violation of Iowa Code chapter 523A, or any rules adopted or orders issued pursuant thereto.

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